



**STATE OF MINNESOTA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
100 Washington Square, Suite 1700  
100 Washington Avenue South  
Minneapolis, Minnesota 55401-2138

December 24, 1996

Dr. Burl Haar, Executive Secretary  
MN Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2145

RE: In the Matter of the Request of US West Communications, Inc. to  
Grandparent CENTRON Services With Future Discontinuance of  
CENTRON, CENTREX, and Group Use Exchange Services; OAH Docket  
No. 3-2500-10567-2

Dear Dr. Haar:

Enclosed and served upon you is the Findings of Fact, Conclusions of Law and  
Recommended Order in the above-entitled matter. The official record will be hand-  
delivered shortly.

Yours very truly,

*Allen E. Giles*

ALLEN E. GILES  
Administrative Law Judge *lv*

Telephone: 612/349-2543

AEG:lr  
cc: All Parties of Record  
Enclosure

RECEIVED  
DEC 26 1996

3-2500-10567-2

MPUC Docket No. P-421/EM-96-471

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Request of  
US WEST Communications, Inc.  
to Grandparent CENTRON  
Services With Future  
Discontinuance of CENTRON,  
CENTREX, and Group Use  
Exchange Services.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED  
ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles on September 30, October 1 and 2, 1996 at 9:30 a.m. in the Large Hearing Room of the Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota.

In addition to U.S. West Communications, Inc. (hereinafter also referred to as "US WEST" or the "Company"), the following Intervenor were granted full status as parties to the proceeding:

The Minnesota Department of Public Service; the Office of Attorney General, Residential and Small Business Utilities Division; Enhanced Telemanagement, Inc., d/b/a Frontier Telemanagement, Inc.; the State of Minnesota, Department of Administration; the Minnesota Business Utility Users Council; McLeod Telemanagement, Inc.; Firstcom, Inc.; AT&T Communications of the Midwest, Inc.; MCI Telecommunications, Inc. and MCI Metro; Info-Tel Communications, Inc.; MFS Intelenet of Minnesota Inc.; City of Minneapolis and Rochester Telecommunications Consortium.

The following persons made appearances on behalf of the parties at the hearing or filed Notices of Appearance:

James A. Gallagher, Maun & Simon, 2000 Midwest Plaza Building West, 801 Nicollet Mall, Minneapolis, Minnesota 55402, and Victoria T. Aguilar, Attorney, US West Communications, Inc., 200 South Fifth Street, Room 395, Minneapolis, Minnesota 55402, on behalf of US West Communications, Inc.;

John B. Van de North and W. Patrick Judge, Briggs & Morgan, 2200 First National Bank Building, St. Paul, Minnesota 55101, and Rebecca DeCook,

Suite 1575, 1875 Lawrence Street, Denver, Colorado 80202, on behalf of AT&T Communications of the Midwest, Inc.;

Eric F. Swanson and Anu Seam, Assistant Attorneys General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, on behalf of the Office of Attorney General, Residential and Small Business Utility Division;

Christopher K. Sandberg, Schatz, Paquin, Lockridge, Grindal & Holstein, PLLP, 100 Washington Avenue South, Suite 2200, Minneapolis, Minnesota 55401, on behalf of Firstcom, Inc.;

Kristine L. Eiden and Michael Hatch, Hatch, Eiden & Pihlstrom, Suite 950 One Financial Plaza, 120 South Sixth Street, Minneapolis, Minnesota 55402, and Michael J. Shortley, III, Senior Attorney, Frontier Corporation, 180 South Clinton Avenue, Rochester, New York 14646, on behalf of Enhanced Telemanagement, Inc., d/b/a Frontier Telemanagement, Inc.;

Ellen Gavin, Katherine L. McGill and Dennis Ahlers, Assistant Attorneys General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, on behalf of the Minnesota Department of Public Service;

Terry L. Adkins, Rochester City Attorney, 201 Fourth Street Southeast, Room 247, Rochester, Minnesota 55904-3780, and Susan Dixon, Telecommunications Coordinator, Olmsted County - ISC, 151 Fourth Street Southeast, Rochester, Minnesota 55904-3710, on behalf of the Telecommunications Consortium;

Ben I. Omorogbe and Amy J. Klobuchar, Gray, Plant, Mooty, Mooty & Bennett, P.A., 3400 City Center, 33 South Sixth Street, Minneapolis, Minnesota 55402, and Karen L. Clauson, Senior Attorney, MCI Telecommunications Corporation, 707-17th Street, #3600, Denver, Colorado 80202, on behalf of MCI Telecommunications Corporation and MCI Metro;

Douglas G. Bonner and Anthony R. Petrilla, Swidler and Berlin Chartered, 3000 K Street N.W., Suite 300, Washington, DC 20007, on behalf of MFS Intelenet of Minnesota, Inc.;

David L. Sasseville, Lindquist and Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, and David R. Conn and William A. Haas, Associate General Counsel, McLeod, Inc., Suite 500, 221 Third Ave. SE, Cedar Rapids, IA 52401, on behalf of McLeod Telemanagement Inc.;

William E. Flynn, Lindquist and Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, on behalf of Minnesota Business Utility Users Council;

Scott Wilensky, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103, on behalf of the State of Minnesota Department of Administration;

Michael J. Bradley, Moss and Barnett, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402, on behalf of Info-Tel Communications Inc.;

Carol Wold Sindt, City of Minneapolis Cable Officer, Room 123 City Hall, 350 South Fifth Street, Minneapolis, Minnesota 55415, on behalf of the City of Minneapolis; and

Cathy Hanson, Telecommunications Analyst, and Diane Wells, Telecommunications Analyst, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101, on behalf of the Minnesota Public Utilities Commission, acting in a neutral capacity.

The Judge has taken notice of the decision of the Nebraska Public Utilities Commission submitted by US WEST Communications, Inc. on December 9, 1996, however, the record for this decision in terms of argument from the parties closed upon receipt of reply briefs on November 23, 1996.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Executive Secretary, Minnesota Public Utilities Commission, 350 Metro Square, 121 Seventh Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 14 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and

## STATEMENT OF ISSUES

## FINDINGS OF FACT

## 4

given an opportunity to submit arguments on the motions in writing. Upon consideration of the motions, the Judge has decided to deny both motions for the following reasons. First, the Prehearing Order issued in this case established a deadline date of September 9, 1996 for raising objections to the admissibility of prefiled testimony. The Order further stated that unless objections are filed by the deadline date, they would be considered waived. Prehearing Order at 6. The motions are also denied because the Judge has determined that it is unnecessary to adhere to the strict rules of evidence to preserve the probative value and integrity of the prefiled testimony. Minn. Rules pt. 1400.7300, subp. 1 governs the admissibility of evidence in contested case proceedings. The rule provides, in part, as follows:

The Judge may admit all evidence which possesses probative value, including hearsay if it is the type of evidence which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs . . . .

This general statement gives the Judge considerable flexibility regarding the admission of the evidence submitted in a contested case proceeding. At times this may require that the parties comply with formal evidentiary rules. However, the Judge has determined that compliance with formal evidentiary rules is not necessary to ensure the probative value of the prefiled testimony proposed as evidence in this proceeding.

#### Summary of US WEST Filing

5. US WEST proposes to grandparent and discontinue CENTRON, CENTREX and Group Use Exchange Services. The Company submitted its proposal to grandparent and discontinue CENTRON/CENTREX services in all states in the 14-state region in which it operates. Tr. p. 82.

6. CENTREX/CENTRON services refers to US WEST business telecommunications services that allow individuals within a community of users to communicate internally or with the public switch network using a switch located in US WEST's Central Office. CENTRON service is a feature-rich telecommunications service offering many of the service features that seem to have become necessary for the conduct of day-to-day business, for example: direct inward dialing, call transfer, call forwarding, call hold, call pickup and call waiting.

7. The CENTRON/CENTREX services affected by the Company's filing include the following: CENTREX, CENTRON, CENTRON 50, CENTRON XL and Group Use. US WEST proposes to discontinue all CENTRON services to new customers effective July 9, 1996. Ex. 1, p. 1. Current customers could

continue to utilize CENTRON services until April 29, 2005, however, the following growth restrictions will be applied:

Current customers may generally add no additional common blocks beyond those common blocks on record as of July 9, 1996;

Customers with 1-100 station lines will be limited to 100 percent growth in station lines every year;

Customers with 100 or more station lines will be limited to 100 percent growth in station lines every two years; and

Current customers will be limited to 20 additional locations each year for each of their common blocks.

Ex. 1, pp. 2-3.

8. According to US WEST, there are two reasons for its proposal to grandparent CENTRON services. Those reasons are:

a. To focus resources on developing a replacement central office-based product, and

b. To address price arbitrage occurring with the current CENTRON offerings.

Ex. 4, p. 3.

#### Analysis of Impact of Proposal

9. US WEST proposes to withdraw CENTRON services before implementing a replacement Central Office-based product. US WEST is uncertain when a replacement product will become available; initially, the Company indicated that a product would be available in late Summer 1996. Ex. 4, p. 11. The Company also indicated that a replacement service would not be available until Fall of 1996. Ex. 5. After those time periods passed, the Company indicated that a replacement product would be available sometime between January and March of 1997. Ex. 20, Att. G. Most recently, the Company has indicated that a firm date cannot be set for introduction of the replacement product. Ex. 5, pp. 13-14.

10. There is increasing demand for CENTRON services in Minnesota. From 1993 to 1995, CENTRON/CENTREX user in the State of Minnesota grew

by a substantial number. Proprietary Transcript Vol. 4, pp. 23, 25-26. This growth equals approximately 13 percent over the three-year period. Prop. Tr. Vol. 4, p. 27. From 1995 to 1996, demand for CENTRON service increased by over 10% in one year. US WEST Prop. Ex. 8.

11. CENTRON service is not functionally obsolete, and there are no technical reasons requiring that the product be withdrawn. CENTRON service offers many functionalities that are well appreciated by customers.

12. Prior to this proceeding, US WEST has never withdrawn a CENTRON/CENTREX family service in Minnesota without a replacement product being made available. Tr. p. 93.

13. In the absence of US WEST's implementing a replacement for CENTRON, there will be no adequate substitute service for CENTRON. For example, direct end users would have to install their own premise switch such as a Key system or PBX involving substantial capital investment, or subscribe to the more expensive single-line business service offered by US WEST. In either case, the end user would find the cost of telephone service to be more expensive than at present. Ex. 38 at 6.

14. Local service resellers target end users that require a single system that serves multiple locations. Ex. 15. In the absence of having CENTRON for resale, resellers would have to install PBX equipment in each and every building complex or campus in order to provide service. It is not feasible for a reseller to install a PBX in each separate location where customers might desire service. US WEST offers no functional equivalents or economical substitutes for CENTRON service that can be effectively used by resellers.

15. The Commission has recognized that the resale of CENTRON services is in the public interest. Order Authorizing the Resale of CENTRON Service, Docket No. P-999/CI-90-235 (January 19, 1993) (hereinafter "Resale Order"). The Commission found that resale of CENTRON expands availability of sophisticated business service options to small and medium-sized business. In so doing, the resale of CENTRON increases customer choices. Resale Order at 12. Consequently, the Commission declared, "CENTRON resale... is required by the public convenience and necessity in US WEST Communication's Inc. exchanges . . ." Resale Order at 18.

16. US WEST's proposal would prevent any new end user customer or Reseller from subscribing to CENTRON effective July 9, 1996. Because no new Reseller would be able to purchase CENTRON after July 9, 1996, US WEST would effectively limit the number of CENTRON Resellers in Minnesota to the number that existed as of July 9, 1996. The withdrawal of CENTRON will limit



consumers' choices and erect barriers to competitive entry by other service providers such as resellers. Ex. 38 at 11.

17. The resale of CENTRON service is an important market entry strategy for telecommunications carriers and telephone companies who desire to develop local exchange competition. In implementing the Telecommunications Act of 1996, the FCC recognized the importance of resale of local exchange service, stating that:

Resale will be an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or by building their own networks.

In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. First Report and Order. FCC 96-325, CC Docket No. 96-98, slip op. ¶ 32 (FCC August 8, 1996).

18. The Telecommunications Act of 1996 requires that an incumbent local exchange carrier such as US WEST "offer for resale at wholesale rates any telecommunications service that the carrier provides as retail to subscribers who are not telecommunications carriers". 47 U.S.C. § 251(c)(4)(A). Therefore, US WEST is now required to provide CENTRON services at wholesale rates to resellers.

19. CENTRON is priced as a competitive service. US WEST's flat rate business line is priced according to the revenue requirements/rate design process of a rate case proceeding. Resellers of CENTRON services purchase large blocks of lines and resells them to small or medium-sized businesses. The cost per line under US WEST flat rate business service substantially exceeds the cost per line for CENTRON.

20. A primary purpose of the US WEST decision to withdraw CENTRON from the Minnesota market is to prevent CENTRON Resellers from coming aggressively onto the market to take advantage of the price difference between US WEST's business flat rate service and CENTRON service.

21. The Commission has recognized in the Resale Order "that resale of CENTRON results in less net contribution than US WEST would experience in the absence of CENTRON resale." Tr. Vol. 1, pp. 67-68. The Commission also indicated in the same Resale Order that the procedural vehicle for addressing concerns relating to loss of contribution due to the resale of CENTRON was a general rate case proceeding.

22. US WEST's application indicates that this proceeding is not intended to address the profitability of providing CENTRON services in Minnesota. Ex. 3. The Company has presented no cost studies that establish that US WEST is in fact experiencing a loss of contribution due to the resale of CENTRON services. This record does not establish that US WEST's revenue requirement is not being met or that CENTRON is priced below cost.

23. US WEST did not establish that any substantial adverse effect on its rates would result from the failure to approve its proposal. Tr. Vol. 1, p. 61, pp. 83-84; Tr. Vol. 4, pp. 7-10. CENTRON is currently priced in excess of its costs. Tr. Vol. 1, p. 61, pp. 83-84.

24. An important component of CENTRON service is its Central Office switching functions. At the present time only U.S. WEST can provide CENTRON service through its local exchange loop monopoly.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. The Minnesota Public Utilities Commission and the Administrative Law Judge have jurisdiction over the subject matter of this hearing pursuant to Minn. Stat. §§ 237.60, subd. 2 (g) and 14.47 - 14.62 and Minn. Rules Parts 1400.5100 - 1400.8300.

2. The Commission gave proper notice of the hearing in this matter, has fulfilled all relevant substantive and procedural requirements of law or rule and has the authority to take the action proposed.

3. As the Party proposing the action in this proceeding, US WEST has the burden of proof. The quantum of proof necessary to establish the facts supporting US WEST's proposal is proof by a preponderance of the evidence. Minn. Rules pt. 1400.7300, subp. 5.

4. US WEST has failed to establish a record supporting the reasons that it has offered for withdrawal of CENTRON service in Minnesota. The Company has failed to articulate any reason why CENTRON services must be withdrawn before a suitable replacement telecommunications service is available. The Company has failed to establish a factual basis for its claim that "uneconomic arbitrage" has occurred or will occur and if it has occurred, why withdrawal of CENTRON service is the best method of addressing the problem.

5. US WEST has failed to prove that the withdrawal of CENTRON in Minnesota is reasonable.

6. Because the Commission has previously determined that CENTRON resale is in the public interest, the legal standard that applies to US WEST's application is the public convenience and necessity standard. Because the resale of CENTRON is not competitive, the application should have been filed under Minn. Stat. § 237.74, subd. 9 (1994).

7. The public policy of the State of Minnesota as expressed in applicable statutes and that of the federal government is that the local exchange market should be open for more competition.

8. A primary reason for withdrawing CENTRON service is to deny the use of that service to new telecommunications carriers who might wish to resell the service. Therefore, the withdrawal of CENTRON services would present a barrier to entry into the local exchange market by Resellers.

9. Because CENTRON resale is a monopolistic service and can be provided only through US WEST's Central Office, withdrawal of CENTRON service requires a determination that public convenience and necessity requires the withdrawal.

10. Any of the above Findings of Fact more properly considered Conclusions of Law are hereby adopted as such.

11. The Administrative Law Judge makes these Conclusions for the reasons given in the attached Memorandum. Where necessary, reasons contained in the Memorandum are adopted and incorporated herein as Conclusions.

#### RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commission DENY US WEST's proposal to grandparent CENTRON services.

Dated this 23rd day of December, 1996.



ALLEN E. GILES  
Administrative Law Judge

### MEMORANDUM

US WEST proposes to grandfather the CENTRON family of services and ultimately withdraw the services by the year 2005. Subscribers are limited to those who were taking the service on July 9, 1996, or had at that time filed an application for the service. Subscribers are also restricted as to the amount of services they may request during the grandfathering period. US WEST states that the reasons it has made this proposal are the following: (a) To bring its interest to bear on a replacement product and (b) to avoid the detrimental effects of resellers engaging in "uneconomic arbitrage".

US WEST's application generated substantial interest, numerous interested persons intervened in the proceeding. The Intervenor, aside from Government Public Interest intervenors, represented two types of CENTRON service users: End Users such as the Rochester Telecommunications Consortium, City of Minneapolis and the State of Minnesota Department of Administration; and Resellers such as Frontier Telemanagement, Inc., McLeod Telemanagement, Inc., Firstcom, Inc., AT&T Communications, Inc., MCI Telecommunications, Inc. and MFS Intelenet of Minnesota, Inc. At the time of trial, only the Resellers and the Government Public Interest intervenors continued to participate contesting the application. Resellers purchase large blocks of CENTRON station lines and resell them to small and medium-sized businesses. Placing restrictions on the availability of CENTRON services and ultimately terminating the services altogether would adversely affect and ultimately terminate the resale of CENTRON in the State of Minnesota. Resellers argue that US WEST's grandfathering proposal is unreasonable and unsupported by the record, is not consistent with the public interest, anti-competitive and violates applicable federal and state statutes.

#### Applicable Legal Standards

US WEST filed its application to grandfather CENTRON services pursuant to Minn. Stat. § 237.60, which provides as follows:

- (g) A telephone company may discontinue a telephone service that is subject to emerging competition, as long as the discontinuance is effective for that service throughout the state, effective 60 days after notice to the commission, the department, and affected customers, unless the commission, within 45 days of the notice, orders a hearing on it. If the commission orders a hearing, the commission shall make a final determination on the discontinuance within 180 days of the date that notice of the discontinuance was filed with the commission, except that if a contested

case hearing before an administrative law judge is required the commission shall make a final decision within ten months of the date the notice of discontinuance was filed.

US WEST asserts that because there are no legal standards contained in Minn. Stat. § 237.60(g) that apply to its application, it should be permitted to exercise its business judgment in connection with this "emerging competitive service". According to US WEST, the Company should be subject to a "reasonableness" standard in the exercise of its business judgment. In other words, the Company maintains that it should only be required to offer a reasonable basis for its proposal.

Upon review of the record, applying this legal standard, the Judge concludes that US WEST has failed to prove that the basis for its proposal is reasonable. First, with respect to US WEST's claim regarding resellers engaging in uneconomic arbitrage, the Company has failed to establish that this is a reasonable basis for withdrawing CENTREX service. US WEST has failed to establish any facts justifying its claim that "uneconomic arbitrage" is occurring or has occurred. In addition, the Commission recognized that potential detriment could occur if US WEST's business flat rate customers migrated to CENTREX services resold by a telecommunications carrier. However, the Commission advised US WEST that this concern could be addressed through a rate case proceeding. Thus, the Judge concludes that this record does not establish that "uneconomic arbitrage" has occurred, and if it has occurred, there is a less drastic method for addressing the problem than withdrawing CENTRON service altogether.

The other reason offered by US WEST for grandparenting CENTRON services is to focus on developing a replacement Central Office-based product. US WEST has offered no logical or reasonable basis why CENTRON service is being withdrawn before a replacement has become available. In addition, because of the Company's representations regarding the date a replacement will become available, there is uncertainty about the date a replacement will be available. It does not appear reasonable to remove from the market a service for which there is continuing and increasing demand.

For these reasons, the Administrative Law Judge is not persuaded that US WEST has met the "reasonableness" legal standard that the Company itself advocated. Under the legal standard proposed by US WEST, the Company has failed to prove its case.

Firstcom, Inc. argues that US WEST's application to grandfather CENTRON must meet a more rigorous legal standard. Firstcom argues that US WEST must establish that public convenience and necessity requires the grandfathering of CENTRON service in the State of Minnesota. The Company

argues that the application for discontinuance should have been filed under Minn. Stat. § 237.74, subd. 9, which provides as follows:

Subd. 9. Discontinuance. If a physical connection exists between a telephone exchange system operated by a telephone company and the toll line or lines operated by a telecommunications carrier, neither of the companies shall have the connection severed or the service between the companies discontinued without first obtaining an order from the commission upon an application for permission to discontinue the physical connection. Upon the filing of an application for discontinuance of the connection, the department shall investigate and ascertain whether public convenience requires the continuance of the physical connection, and if the department so finds, the commission shall fix the compensation, terms, and conditions of the continuance of the physical connection and service between the telephone company and the telecommunications carrier. Prior commission approval is not required for severing connections where multiple local exchange companies are authorized to provide service. However, the commission may require the connections if it finds that the connections are in the public interest.

According to this section, neither the telephone company nor a telecommunications carrier can discontinue service between the companies without first obtaining an Order from the Commission allowing the discontinuance. For the discontinuance to be approved, there must be a determination that the public convenience and necessity requires the discontinuance. The Judge concurs with Firstcom's argument and concludes that US WEST's application for grandparenting CENTRON services should have been filed under this section. CENTRON is a monopoly Central Office-based switching service. At the present time, only US WEST can provide this Central Office switching service, there are no alternative providers. The Judge is aware that Minn. Stat. § 237.59, subd. 1(a)(5) declares that "Central Office-based pricing packages providing switched business access lines" are "subject to emerging competition". Although the "pricing packages" are competitive, it does not follow that the resale of Central Office-based switched access is competitive. "Resale availability" of Centron is not competitive; at the present time there is no alternative provider of "resale availability." At the present time only U.S. WEST makes "central-office based switched access" available for resale.

Another reason that a more rigorous standard of review applies to the US WEST application is that the Commission has already determined that resale of CENTRON services is in the public interest. It would be inappropriate to allow

US WEST to nullify the determination simply by the exercise of its "business judgment". It necessary follows that if the Commission has made a determination that resale is in the public interest that there must be a "public convenience and necessity" determination before CENTRON resale is discontinued.

Based on the foregoing, the Judge concludes that US WEST's grandfathering proposal requires a determination that public convenience and necessity requires that CENTRON services be discontinued.<sup>1</sup>

#### Whether US WEST's Application is Anti-Competitive

All the Reseller-intervenors claim that US WEST's application to grandfather CENTRON is anti-competitive. They assert that by grandfathering CENTRON, US WEST will eliminate this method of entry into the local exchange market in Minnesota. US WEST rejects this view, asserting that the resellers have no intention of using CENTRON as the "gateway" to the local exchange market in Minnesota and that there are other US WEST products such as business flat rate, CCMS and PBX that are viable resale alternatives to CENTRON that would allow competitive entry.

US WEST admitted in its application to grandfather CENTRON and through its witness Karen Baird that the Company is in part motivated by a desire to prevent Resellers from "aggressively" taking advantage of a "price anomaly". Karen Baird testified that there are currently seven Resellers authorized by the Commission to resell CENTRON and that "all the current indications are that unless the service is grandparented, additional resellers will aggressively enter the market." Ex. 4, p. 8. Thus, contrary to US WEST's argument, its own witness anticipates that Resellers will use CENTRON services to "aggressively" enter the local exchange market.

The Judge has previously found that there are no US WEST products economically or functionally equivalent to CENTRON service that are useable by Resellers. Therefore, removal of CENTRON service will have the effect of eliminating this method of access to the local exchange market. US WEST's

---

<sup>1</sup> The Judge notes that Firstcom, Inc.'s argument regarding US WEST's CENTRON services be treated as a monopoly service was first raised in a Reply brief. US WEST has not had an opportunity to reply directly to the argument. However, US WEST does argue that CENTRON is a "competitive" service. The Administrative Law Judge acknowledges that Central Office-based switched access business lines compete with PBX systems. However, there is a compelling distinction to be drawn between the PBX-Central Office-based switching competition and the Reseller-US WEST competition: if Central Office-based switching is withdrawn, Resellers no longer have this service available and, therefore, cannot compete with US WEST.

proposal to grandfather CENTRON services will erect a barrier to the entry into the local exchange market.

AEG



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
Mac McCollar  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request of U S WEST  
Communications, Inc. to Grandparent  
CENTRON Services With Future  
Discontinuance of CENTRON, CENTREX  
and Group Use Exchange Services

ISSUE DATE: February 20, 1997

DOCKET NO. P-421/EM-96-471

ORDER DENYING PETITION

**PROCEDURAL HISTORY**

U S WEST Communications, Inc.'s (USWC's or the Company's) CENTRON proposal under consideration in this Order, filed April 30, 1996, is the latest in a series of filings by the Company seeking to reprice and restructure its CENTRON family of services. The history and consequence of those prior filings is set forth in the Commission's August 30, 1993 ORDER APPROVING STIPULATION AND CLOSING DOCKETS. The Commission summarized the net effect of these filings on page 8 of its Order. The Commission further stated:

USWC has indicated that it may make its next Centron Plus filing as early as mid-November 1993. In the event that the Company does not make such a filing prior to May 1, 1995, it will be required to file a letter notifying the Commission of its intentions regarding the matter.

On April 25, 1995, USWC notified the Commission that it had provided copies of its CENTRON/CENTREX proposal to the Departments of Administration (DOA) and Public Service (the Department) for preliminary review. The Company stated that both Administration and Public Service supported the preliminary filing as to its compliance with filing requirements set out in statute and Commission Order and encouraged the Company to submit its formal filing to the Commission.

On February 5, 1996, USWC filed a notice and request for approval with the Commission stating that it wished to "grandparent" its CENTRON Services, increase the rates paid by some of its CENTRON customers and ultimately terminate CENTRON, CENTREX and Group Use Exchange services by April 29, 2005. The Company also sought to "terminate its previously identified intention to propose a replacement for these services with CENTREX Plus" per Docket No. P-421/EM-91-1002. This filing was assigned Docket No. P-421/EM-96-123.

On March 5, 1996, the Commission met to consider USWC's February 5, 1996 CENTRON proposal. The Commission found that there were "significant flaws with USWC's multi-

component filing" and rejected it. With respect to the CENTRON rate change component of the filing, the Commission noted that the Company had not submitted an incremental cost study in support of its proposal. As a result, Docket No. P-421/EM-96-123 was closed.

On April 30, 1996, USWC filed its current proposal to grandparent CENTRON services and ultimately discontinue CENTRON, CENTREX and Group Use Exchange Services. The filing has been assigned to Docket No. P-421/EM-96-471. The Company filed its proposal pursuant to Minn. Stat. § 237.60, subd. 2 (g), discontinuation of service, because new customers would be unable to subscribe to any CENTRON services. The Company notified affected customers per the requirement of this statute.

On May 31, 1996, the Commission issued its ORDER SUSPENDING RATES AND ORDERING HEARING and its NOTICE AND ORDER FOR HEARING. The matter was referred to the Office of Administrative Hearings.

A prehearing conference was held on June 13, 1996 before the Administrative Law Judge (ALJ). The ALJ issued a Prehearing Order on June 28, 1996. The following parties were granted intervenor status in the case: the Department of Public Service (Department); the Residential and Small Business Utilities Division of the Office of the Attorney General, (RUD-OAG); the Department of Administration (DOA); AT&T of the Midwest (AT&T); Firstcom, Inc. (Firstcom); Frontier Telemanagement, Inc. (Frontier); Infotel Communications, Inc.; MCI Telecommunications, Inc. and MCImetro (MCI); MFS Intelenet of Minnesota, Inc. (MFS); McLeod Telemanagement, Inc. (McLeod); the Minnesota Business Utilities Users Council (MBUUC); the City of Minneapolis; and the Rochester Telecommunications Consortium.

Between September 30 through October 2, 1996, the ALJ conducted evidentiary hearings.

On December 26, 1996, the Commission received the ALJ's Findings of Fact, Conclusions of Law and Recommended Order.

On January 10, 1997, USWC, the Department, Frontier and MCI submitted exceptions to the ALJ's report.

The Commission met on February 6, 1997 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. USWC'S PROPOSAL**

USWC is not seeking to change the rates for CENTRON services with this filing as is had in the previous filing. Instead, USWC proposed to

1) withdraw its entire CENTRON group of services (CENTRON, CENTRON 50 and XL and CENTREX-like service) by April 29, 2005 and

2) "grandparent" its existing CENTRON group service customers and any potential customers with currently outstanding authorized service proposals.<sup>1</sup>

As part of its "grandparenting" plan, USWC would continue to provide CENTRON services to current customers (its own end user customers as well as resellers) but would not make these services available to any new customers as of July 9, 1996. In addition, USWC would impose certain conditions on the movement, additions and changes to existing customers' CENTRON services. For example, current customers would not be allowed to add common blocks and growth in the number of station lines that a customer may add in any year would be restricted.

USWC presented three main factors in support of its proposal:

- **Uneconomic Arbitrage**

The Company noted that CENTRON's current pricing structure has significant anomalies when compared with its basic business service and feature pricing. These anomalies, the Company stated, have created opportunities in the marketplace. The Company stated that it developed the current pricing structure for large customers and had not anticipated "that tariff arbitrage of basic telephone services would or could become significant" with respect to small business CENTRON users. USWC argued that this arbitrage is improper, a misapplication of CENTRON services in the local marketplace.

- **Inadequate Service**

USWC argued that its current CENTRON services were not adequate to meet rapidly changing customer needs. The Company stated that it is developing a product that will better meet the needs of its customers. The Company also cited the planned development of this new product as support for its proposal, i.e. to focus its resources on this product development.

- **Adequate Substitute Service**

USWC stated that the proposed nine-year time frame would give its customers adequate time to determine alternative courses of action. Moreover, the Company asserted that the marketplace currently offers several attractive alternatives to its central office-based CENTRON services. In its April 30, 1996 filing, USWC predicted that it would have a replacement for CENTRON services by late summer of 1996.

---

<sup>1</sup> USWC's CENTREX and Group Use Exchange Services were previously grandparented by the Commission in July 1979. No new customers have been permitted to subscribe to those services since that time. USWC's proposal with respect to these services is to discontinue them effective 2005, along with the entire CENTRON family of services.

## **II. THE PARTIES' COMMENTS**

### **A. The Department**

The Department recommended that the Commission reject USWC's proposal to grandparent and subsequently terminate CENTRON service. The Department argued that the Commission has not approved grandparenting of a USWC service in circumstances similar to those presented by this docket. According to the Department, the typical reasons to "grandparent" a service are lack of customer demand or technical obsolescence.

#### **1. Customer Demand/Satisfaction**

The Department stated that CENTRON is a major local exchange service subscribed to by many customers, both direct end-users and resellers. The Department argued that, contrary to USWC's claims, direct end-users and resellers are satisfied with the CENTRON products. According to the Department, the evidence shows that the CENTRON market is growing. The Department noted that USWC's own company literature stated that the market for CENTRON services was showing continued growth and, further, that CENTRON was at feature parity with PBX systems.

According to the Department, there is substantial evidence that customers value the existing CENTRON service and it is not lacking any technical or functional merit.

#### **2. Alleged Uneconomic Arbitrage**

The Department asserted that the Company's arbitrage notions are archaic and antithetic to the evolving competitive marketplace; they provide no basis for discontinuing CENTRON. The Department noted that the Company provided no evidence that its revenue requirement is not being met or that CENTRON is priced below cost.

#### **3. No Substitute Service**

The Department stated that there is no adequate substitute service for CENTRON. To achieve the same level of service and features, direct end-users would have to install their own customer premise equipment such as PBX (private branch exchange) and key systems. This requires a substantial capital investment. Alternatively, smaller businesses would have to subscribe to more expensive single-line business service. There are no effective substitute services for the CENTRON reseller. Alternative services suggested by USWC are not functionally equivalent to CENTRON.

As a consequence, the economic effects of eliminating CENTRON would be very costly because customers would be forced to subscribe to single-line business service (1FB) or install their own PBX equipment.

#### **4. Impact Upon Competition**

The Department noted that the issue of competition has not been considered in previous grandparenting proposals. The Department argued that since resale has been recognized as an initial step in an evolving competitive marketplace, the Department argued that grandparenting CENTRON would stifle the development of competition. The Department noted that when USWC grandparented early CENTREX type services, the Company offered CENTRON as a replacement service. In the current filing, the Company has not offered a substitute service for CENTRON.

The Department argued that USWC's proposal would restrict customer choice and erect barriers to competitive entry. According to the Department, customer choice would be restricted in three ways:

first, no new customers could subscribe to CENTRON after July 9, 1996;

second, service expansion is limited during the period of grandparenting; and

third, since resellers would also be restricted in their ability to expand and new resellers would be precluded from entering the market, customers' choice of provider is restricted.

In sum, the Department argued, the proposed grandparenting would erect barriers to competitive entry by limiting the relative size and number of resellers in the marketplace -- two important indicators of an effectively competitive market.

Finally, the Department noted that the Commission must also ensure that USWC is meeting state and federal statutory resale requirements.

#### **B. AT&T**

##### **1. Violations of Law**

AT&T argued that USWC's grandparenting proposal is discriminatory and would violate state and federal law, as follows:

- The Telecommunications Act of 1996 imposes on incumbent local exchange carriers "[t]he duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of [any] telecommunications service." (47 U.S.C. § 251(c)(4), emphasis added.)
- Minnesota law (Minn. Stat. § 237.09, subd. 2 (a)) prohibits discrimination in the resale of telecommunications services. USWC's proposal is unlawful because it would create two classes of USWC competitors: those who could purchase CENTRON for resale and those, like AT&T, who could not because they had not been CENTRON subscribers as of the Company-proposed cut-off date: July 9, 1996.

In short, AT&T argued that CENTRON resale is essential to the development of local competition and USWC is not entitled to decide how its competitors will enter the market. AT&T argued that the Company's proposal would thwart state and national efforts to open local telephone markets to competition.

## **2. Commission Practice**

Current statutes aside, AT&T argued that industry and Commission practice did not support the grandparenting of services that are not obsolete and for which no replacement service is available. According to AT&T, the evidence has established that CENTRON provides a viable and useful alternative to PBX systems and that there is continuing demand for CENTRON services.

Further, AT&T noted that USWC was unable to show that CENTRON pricing poses a detriment to the Company and its ratepayers if CENTRON continued to be resold. Even if this were the case, AT&T asserted, the Company's "uneconomic arbitrage" argument does not support the drastic remedy that USWC seeks in its proposal.

### **C. Firstcom**

Firstcom, an authorized reseller of USWC's CENTRON services, stated that the Commission should reject USWC's proposal because it is discriminatory, anticompetitive and contrary to the requirements of the Telecommunications Act of 1996 and Minnesota law. Firstcom argued that since USWC has indicated that it has priced CENTRON services above cost, the Company lacks a basis on which to argue that their continued use by resellers is now contrary to the public interest.

### **D. Frontier, MCI, MFS, and McLeod**

These four companies made points similar to those set forth above by the Department, AT&T, and Firstcom. In addition, these points were made:

- Frontier noted that in its January 28, 1993 Resale Order, the Commission indicated that USWC was free to correct CENTRON rate disparities in a general rate case proceeding. Frontier argued that a rate case proceeding, not withdrawal of the service, is the appropriate manner in which to address the Company's arbitrage concerns. In response to USWC's assertion that CENTRON resale to small businesses is a misuse of the product, Frontier noted that in the CENTRON Resale Order the Commission specifically found that the resale of CENTRON to small and medium businesses is in the public interest. Finally, Frontier argued that if the Commission permits USWC to withdraw CENTRON, small and medium-sized businesses and nonprofit organizations, many of which purchase resold CENTRON services from Frontier, would be negatively affected.
- MCI noted that resale of telecommunications services is crucial for the development of a competitive environment and that both Minnesota and federal law prohibit limitations on

the resale of telecommunications services. MCI also urged the Commission to dismiss USWC's objection to "pricing arbitrage." MCI noted that the Telecommunications Act requires resold services to be offered at wholesale and does not require reconciliation of the wholesale rates offered by an incumbent carrier with its revenue requirement. MCI argued that resale in a competitive environment encourages "pricing arbitrage."

- MFS argued, among other things, that the Company's attempt to make a direct correlation between [revenues derived from] single-line business and CENTRON does not form a legitimate basis upon which to discontinue CENTRON. MFS stated that USWC could seek a rate adjustment for CENTRON services to make up any lost contribution resulting from CENTRON resale.
- McLeod emphasized that the importance of CENTRON resale to the development of local competition should not be underestimated. According to McLeod, there is no realistic alternative to CENTRON service to bring competition to Minnesota in the near term. McLeod noted that it is the ability of CENTRON to serve multiple locations from a single source that makes it such a good vehicle to open markets to competition by resellers.
- McLeod further argued that, in the absence of proof that CENTRON is priced below cost, USWC's decision to withdraw CENTRON without providing a substitute is not a "legitimate business decision", as claimed by USWC; instead, such a decision is economically illogical and self-defeating for a competitive company. Viewed in this light, McLeod suggested, USWC's proposal could be seen as purposefully anticompetitive.

### III. THE ALJ'S RECOMMENDATION

The ALJ recommended that the Commission deny USWC's proposal to grandparent CENTRON services. The ALJ found that CENTRON is a monopolistic service for which there is no functional equivalents or economical substitutes and noted that the Commission has previously found that resale of CENTRON is in the public interest. Based on these facts, the ALJ stated that the legal standard that applies to USWC's proposal is the public convenience and necessity standard enunciated in Minn. Stat. § 237.74, subd. 9.

After examining the evidence, the ALJ concluded that USWC failed to bear its burden of showing that public convenience and necessity requires the proposed withdrawal. Specifically, the ALJ found that USWC failed to establish

- why CENTRON services must be withdrawn before a suitable replacement is available;
- a factual basis for its claim that "uneconomic arbitrage" has occurred or will occur and

- if such arbitrage has occurred, why withdrawal is the best method for addressing the problem.

The ALJ further found that a primary purpose of USWC's decision to withdraw CENTRON from the Minnesota market was to prevent resellers from coming into the market to take advantage of the price difference between USWC's flat-rate business service and CENTRON service. The ALJ noted that this purpose is contrary to the public policy of the State and federal government that the local exchange market should be open for more competition.

#### IV. COMMISSION ANALYSIS AND ACTION

In this Order, the Commission exercises its authority under Minn. Stat. § 237.60, Subd. 2 (g) to review petitions to discontinue telephone service that is subject to emerging competition and under Minn. Stat. 237.16, Subd. 1 to promote fair and reasonable competition for local exchange telephone services.

Upon full review of this matter, the Commission finds that USWC's proposal to grandparent CENTRON services and discontinue the entire family of CENTRON (which includes CENTREX and Group Use Exchange products, services that have already been grandparented) is unreasonable and not in the public interest at this time.

Accordingly, the Commission will deny the Company's April 30, 1996 filing.

The Commission's analysis is as follows:

##### A. Legal Standard Dispute

The ALJ stated that because the Commission has previously found that CENTRON resale is in the public interest and because CENTRON resale is a monopolistic service, the legal standard that USWC must meet in order to be allowed to withdraw the service is set forth in Minn. Stat. § 237.74, Subd. 9: the "public convenience" standard. USWC took exception to the ALJ's ruling, contending that a more specific statute [Minn. Stat. § 237.60, Subd. 2 (g)] governed the discontinuance of emergingly competitive services such as CENTRON. And since that statute enunciated no particular standard, the Commission should give the Company the latitude to make reasonable business decisions, based on business considerations.

The Commission is inclined to agree with the USWC that Minn. Stat. § 237.74, Subd. 9 does not apply to the Company's proposal. Minn. Stat. § 237.74 appears to apply to discontinuance of toll service to telecommunications carriers (long-distance providers) rather than to the discontinuance of a local service offering to local telephone companies (competing LECs).

Because the Commission has previously found that resale of CENTRON under certain conditions is in the public interest, it seems that (absent additional legislative direction) it would be appropriate to allow discontinuance of such service only if USWC were able to show that continued service is not in the public interest. Further, in the absence of a specifically stated



legal standard in the discontinuance statute, a public interest standard would appear to be the logical default standard.

## **B. Ultimate Irrelevance of the Standards Dispute in This Case**

Changing the legal standard from “public convenience and necessity” or “public interest” to “reasonableness” as urged by USWC does not save the Company’s proposal, however. The Company’s proposal fails under whatever standard is applied. The Commission finds that USWC’s proposal does not meet the least rigorous of the standards (the “reasonable business decision” standard) because the proposal is not reasonable on several counts, each of which is sufficient in itself to compel rejection of the proposal, as the following analysis shows.

## **C. Grounds for Rejection**

### **1. Minnesota Statute Guarding Local Resale**

The proposal conflicts with Minn. Stat. § 237.121, subd. 5 which states:

A telephone company or telecommunications carrier may not do any of the following with respect to services regulated by the commission:

....

(5) impose restrictions on the resale or shared use of its services or network functions,...[except for two circumstances that all agree do not apply to USWC’s proposal].

It appears indisputable to the Commission that USWC’s proposal is to impose restrictions on the resale of its services. In the first place, it would restrict the provision of CENTRON to existing customers, effective July 9, 1996. Second, it would limit current CENTRON customers’ ability to, for example, add common blocks and increase the number of station lines.

In the face of the clear mandate of the Minnesota legislature prohibiting restrictions on resale of its services, USWC’s proposal is simply illegal and, hence, contrary to public policy and unreasonable as a matter of law. Note that the statute does not appear to countenance “reasonable business decision,” as urged by USWC, as justification for imposing restrictions on the resale or shared use of its services or network functions. The legislature’s judgment in enacting such a flat prohibition against any restrictions on the resale of local service appears to be that it is necessary and appropriate to create a period of time during which competition in the local market is actively fostered in this manner.<sup>2</sup>

---

<sup>2</sup> The Commission notes that the statute, which was added by Laws 1995, Chapter 156, Section 4, sets the provision in question to expire automatically on January 1, 2006.

## **2. Federal Law Guarding Local Resale**

The proposal violates the Federal Telecommunications Act of 1996 which imposes on USWC, as the incumbent LEC, the duty

not to...impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service,....

47 U.S.C. § 251(c)(4)(B).

In this case, the "conditions and limitations" that would be imposed by USWC are as identified in the preceding discussion of the Minnesota statute. The discriminatory nature of these conditions and limitations is shown by the fact that they would create two classes of USWC competitors: those who, simply because they were CENTRON subscribers as of July 9, 1996, can purchase CENTRON for resale and those who cannot, simply because they were not CENTRON subscribers as of July 9, 1996. The limitations and conditions imposed are also unreasonable, for reasons discussed next.

## **3. Interference With Minnesota Public Policy: the Development of Local Competition**

USWC's proposal is unreasonable because it would interfere with the development of competition in the local service market, competition which the Commission has a specific duty to foster pursuant to Minn. Stat. § 237.16, Subd. 1. The Commission's analysis of the impact of USWC's CENTRON proposal upon competition is as follows:

Based on the best information available to it, the Commission believes that the development of local competition in Minnesota will be, of necessity, incremental in nature and in need of active fostering care in certain respects during its early stages of development. The record in this matter establishes that resale of CENTRON is an important market entry strategy for telecommunications carriers and telephone companies.<sup>3</sup> USWC offers no functional equivalents

---

<sup>3</sup> The FCC has also recognized the importance of resale, stating that:

Resale will be an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or building their own networks.

In the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. First Report and Order. FCC 96-325, CC Docket No. 96-98, slip op. ¶ 32 (FCC August 8, 1996).

or economical substitutes for CENTRON service that resellers can use.<sup>4</sup> Nor does the record support USWC's assertion that consumers have alternate ways to obtain the same functionality and access to the network that can be obtained via CENTRON. CENTRON service, hence, is an essential stepping stone to local competition at this time. Withdrawal of CENTRON service at this time would present a significant barrier to entry into the local exchange market by resellers. In these circumstances, USWC's proposed withdrawal of CENTRON service is unreasonable, contrary to Minnesota public policy.

#### **4. Unreasonableness of USWC's Purported "Reasonable Business Decision"**

The record in this matter shows that the "business reasons" asserted by USWC for grandparenting and eventually withdrawing CENTRON (alleged customer dissatisfaction and "uneconomic" arbitrage) are not valid:

**Customer Satisfaction:** USWC provided no evidence in support of its assertion of customer dissatisfaction with CENTRON. To the contrary, the Company's assertion is refuted in the record, which shows that CENTRON is well appreciated by customers and that customer demand for CENTRON services in Minnesota is significant and increasing. The record does not support USWC's assertion that consumers have alternate ways to obtain the same functionality and access to the network that can be obtained via CENTRON. In these circumstances, it appears clear that it is the **discontinuance** of CENTRON, not the continuation of that service, that would cause great customer dissatisfaction since there is no adequate substitute service for CENTRON and without CENTRON the cost of telephone service would be more expensive than it is now.

**Uneconomic Arbitrage:** It appears that USWC would have the Commission apply the term "uneconomic arbitrage" to two instances: 1) when CENTRON rates are below USWC's cost and 2) when resale of CENTRON results in USWC losing contribution, calculated as the difference between the contribution received through resale of CENTRON and the contribution received through the sale of 1FB.<sup>5</sup>

---

<sup>4</sup> The replacement service for CENTRON that USWC projected would be available by late summer 1996 has not materialized. USWC now acknowledges that it does not know when such a replacement service will become available.

<sup>5</sup> The Commission does not believe [It is not clear?] that the second instance (arbitrage attended by the loss of contribution) is a valid example of "uneconomic" arbitrage. While loss of contribution from a particular service is something the Company may understandably wish to avoid or minimize, it is not clear that the fact that the contribution (rate?) provided by resale of CENTRON is lower than that provided by USWC's 1FB service renders the arbitrage of wholesale CENTRON "uneconomic". In any event, the weight accorded the Company's concerns, however termed, depends not on whether the arbitrage in question is classifiable as uneconomic, but upon the damage, if any, due to the identified activity that the Company is able to establish.

The record established in this case does not support USWC's assertion that uneconomic arbitrage is taking place with respect to the CENTRON service.<sup>6</sup> The Company has presented no cost studies that establish that CENTRON is priced below cost. Nor does the record show that USWC is actually experiencing a loss of contribution due to resale of CENTRON. In these circumstances, the Commission finds that the general allegation that resale of CENTRON is "uneconomic arbitrage" is not supported in the record.

Rather than establishing loss of contribution in the record of this case to support its "uneconomic arbitrage" claim, USWC relied heavily upon statements made by the Commission regarding the expected impact of CENTRON resale in its January 19, 1993 ORDER AUTHORIZING THE RESALE OF CENTRON SERVICE in Docket No. P-999/CI-90-235. In that Order, however, the Commission did not find that CENTRON prices are below cost. The concern expressed by the Commission regarding lost contribution was in relation to the consequent "threat" to rates paid by USWC's ratepayers. Order at page 13.

It is important to note that the primary concern expressed by the Commission in its January 19, 1993 Order was not for the loss of contribution levels for their own sake (or for that of the Company), but to preserve USWC's other ratepayers (non-CENTRON subscribers) from harm. The Commission stated:

The Commission is committed to protecting USWC's ratepayers from any harm which may be caused by ETI's resale of CENTRON. Order at page 14.

The Commission was also concerned to maintain the Company income neutral, of course. Order at page 13.

Further, it is incorrect, as USWC argued, to cite the Order as support for withdrawal of the CENTRON service. The solution for ratepayers and the Company envisioned by the Commission in that Order was that CENTRON resale was

...a pricing plan for USWC's CENTRON service ... that neutralizes any adverse impact of CENTRON resale upon USWC's customers. Order at page 14.

It is clear from reading the Commission's January 19, 1993 Order that the Commission believed, based on USWC's representations, that the lost contribution issue was significant and that the Company would be seeking an adjustment of the CENTRON price plan soon.

---

<sup>6</sup> Arbitrage in the context of local telecommunications occurs when a reseller purchases a local service at wholesale from the LEC and resells it to end-users at a price below what the end-user would pay if he/she purchased the service directly from the LEC. The Commission notes that arbitrage in general (sometimes termed "price arbitrage"), as opposed to uneconomic arbitrage, is unobjectionable. The Commission believes that the point at which arbitrage becomes "uneconomic" (and hence a valid concern to consider in deciding whether discontinuance of the underlying service should be allowed) is when the wholesale price of the service (in this case CENTRON) is priced below cost.

However, in the four years after the Commission's Order, USWC has not quantified its alleged contribution loss nor has it provided an acceptable filing to change the CENTRON rates. Instead, USWC has chosen to seek withdrawal of the service in the current filing. This history suggests that the Company is either unwilling or unable to quantify a significant contribution loss or justify any significant rate change due to such loss.

In these circumstances, the Commission finds that a lost contribution concern (the importance of which was always contingent upon a presumed impact upon rates) recedes significantly and, in the circumstances discussed above, falls far below the level required to render the Company's proposed action acceptable as a reasonable business decision.

### ORDER

1. USWC's proposal filed April 30, 1996 in this matter is denied as contrary to the public interest.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

*Janet L. Gonzalez, for:*

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

RECEIVED  
JUL 30 1997

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner

RECEIVED  
AUG 04 1997

In the Matter of the Request of U S WEST  
Communications, Inc. to Grandparent  
CENTRON Services with Future  
Discontinuance of CENTRON, CENTREX  
and Group Use Exchange Services

ISSUE DATE: July 29, 1997

DOCKET NO. P-421/EM-96-471

ORDER DENYING PETITION FOR  
REHEARING

**PROCEDURAL HISTORY**

At its February 6, 1997 Telecommunications Agenda meeting the Commission voted to deny USWC's petition.

On February 13, 1997, USWC filed its petition for rehearing.

On February 20, 1997, the Commission issued its ORDER DENYING PETITION (i.e., denying USWC's April 30, 1996 Proposal). The Commission found that USWC's proposal was not in the public interest at the present time, and without an alternative available, the proposal was anticompetitive in violation of state and federal law.

On February 21, 1997, Commission Staff issued a notice and clarification of the schedule for filing answers to USWC's petition for rehearing.

Between February 21, 1997 and March 4, 1997, answers to USWC's petition for rehearing were filed by Frontier Telemanagement, Inc. (Frontier), MFS Intelnet of Minnesota, Inc. (MFS), the Minnesota Department of Public Service (the Department), McLeod Telemanagement, Inc., AT&T Communications of the Midwest, Inc., and MCI Telecommunications Corporation.

On June 25, 1997, the Commission met to consider this matter.

cc: David R. Conn  
William A. Haas  
Kimberly Freise  
from: David Sasseville 7/30/97

## **FINDINGS AND CONCLUSIONS**

### **A. USWC's Petition for Rehearing**

USWC has requested the Commission to rehear and reconsider its February 20, 1997 Order for the following reasons:

- The revenue from a resold CENTRON line is significantly less than that of a one party business line (1FB). The financial implication of this situation is that continued migration of USWC's 1FB customers to resold CENTRON service will put upward pressure on local residential rates.
- Approval of the Company's April 30, 1996 proposal (the proposal) would open USWC's entire existing CENTRON customer base to competition because customers would no longer be subject to contract termination penalties. The proposal also encourages other carriers to enter the market and provide central office-based services of their own. Therefore, USWC's proposal is pro-competitive.
- Electronic key and private branch exchange systems, and USWC's CCSM (Customized Call Management Services/Centron I) service are viable alternatives to central office-based services (CENTRON).
- The proposal would allow resellers to compete for USWC's existing retail CENTRON customer base. The growth restrictions and ultimate discontinuation of service would encourage CENTRON customers to look for alternative services in a timely manner. Therefore, USWC's proposal would not violate state or federal law.

### **B. Comments of Other Parties**

Frontier Telemanagement Inc. (FTI), MFS Intelenet of Minnesota, Inc. (MFS), the Minnesota Department of Public Service (the Department), McLeod Telemanagement, Inc. (McLeod), AT&T Communications of the Midwest, Inc. (AT&T) and MCI Telecommunications Corporation, et al. (MCI) all filed in opposition of USWC's petition for rehearing. Most acknowledged that the Commission had provided more than adequate review and fair consideration of USWC's proposal. Some noted that USWC's petition for rehearing was not filed in a timely manner, i.e., before the Commission had issued its Order. In summary, all supported the Commission's February 20, 1997 Order and recommended that USWC's petition be rejected.

### C. Commission Analysis

In its February 20, 1997 Order, the Commission thoroughly examined USWC's arguments and explained in detail its rationale for rejecting USWC's proposal to grandparent CENTRON services and ultimately discontinue CENTRON, CENTREX, and Group Use Exchange Services. Order at pages 9-13. The Commission's reasons for rejecting USWC's proposal included concerns that the proposal

- conflicted with the Minnesota statute regarding local resale, Minn. Stat. § 237.121, subd. 5;
- violated the federal law regarding local resale, 47 U.S.C. § 251(c)(4)(B);
- interfered with Minnesota public policy to encourage the development of local competition pursuant to Minn. Stat. § 237.16, subd. 1; and
- was not based on reasonable business decisions.

For each concern and finding expressed in its Order, the Commission explained in detail its rationale. On review, the Commission finds that these rationales and conclusions are sound.

In its written and oral arguments for rehearing and reconsideration, USWC provided no new facts or arguments nor did the Company substantiate any errors in the Commission's February 20, 1997 Order. Accordingly, the Commission will deny USWC's petition.

One issue warrants further discussion. In its arguments on reconsideration, USWC continued to press its uneconomic arbitrage argument but was unable to shed any additional light upon the subject. This is the same situation that the Commission faced in making its initial Order. At that time the Commission stated:

...in the four years after the Commission's Order<sup>1</sup>, USWC has not quantified its alleged contribution loss nor has it provided an acceptable filing to change the CENTRON rates. Instead, USWC has chosen to seek withdrawal of the

---

<sup>1</sup> See In the Matter of a Commission-Initiated Proceeding to Determine Whether Resale of Local Telephone Service is in the Public Interest, Docket No. P-999/CI-90-235, ORDER AUTHORIZING THE RESALE OF CENTRON SERVICE (January 19, 1993).



service in the current filing. This history suggests that the Company is either unwilling or unable to quantify a significant contribution loss or justify any significant rate change due to such loss.

In these circumstances, the Commission finds that a lost contribution concern (the importance of which was always contingent upon a presumed impact upon rates) recedes significantly and, in the circumstances discussed above, falls far below the level required to render the Company's proposed action acceptable as a reasonable business decision.

February 20, 1997 Order at page 13.

The Commission notes that part of the proceedings in this matter included an extensive contested case hearing during which USWC had ample opportunity to provide a factual basis for its economic arbitrage claim but failed to do so.

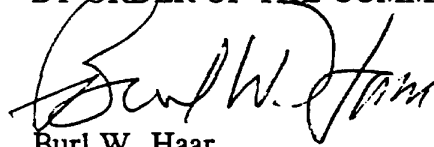
#### **D. Commission Action**

In conclusion, the Commission's finding that USWC's April 30, 1996 proposal contrary to the public interest is sound and will be affirmed. The Commission's Order denying the Company's proposal will be upheld. The Company's petition for rehearing will be denied.

#### **ORDER**

1. U S WEST Communications, Inc.'s petition for rehearing is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).